

EDMONDS CITY COUNCIL APPROVED MINUTES

October 4, 2016

ELECTED OFFICIALS PRESENT

Dave Earling, Mayor
Kristiana Johnson, Council President
Michael Nelson, Councilmember
Adrienne Fraley-Monillas, Councilmember
Diane Buckshnis, Councilmember
Dave Teitzel, Councilmember
Thomas Mesaros, Councilmember
Neil Tibbott, Councilmember

STAFF PRESENT

B. McIntyre, Police Officer
Phil Williams, Public Works Director
Patrick Doherty, Econ. Dev & Comm. Serv. Dir.
Shane Hope, Development Services Director
Rob English, City Engineer
Kernen Lien, Senior Planner
Jeff Taraday, City Attorney
Scott Passey, City Clerk
Andrew Pierce, Legislative/Council Assistant
Jerrie Bevington, Camera Operator
Jeannie Dines, Recorder

1. CALL TO ORDER/FLAG SALUTE

The Edmonds City Council meeting was called to order at 7:02 p.m. by Mayor Earling in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

2. ROLL CALL

City Clerk Scott Passey called the roll. All elected officials were present.

3. APPROVAL OF AGENDA

Council President Johnson requested Item 5.2, Presentation by Diversity Commission, be deferred to a future meeting as the presenter was ill tonight.

COUNCIL PRESIDENT JOHNSON MOVED, SECONDED BY COUNCILMEMBER TEITZEL, TO APPROVE THE AGENDA IN CONTENT AND ORDER AS AMENDED. MOTION CARRIED UNANIMOUSLY.

4. APPROVAL OF CONSENT AGENDA ITEMS

Councilmember Buckshnis requested Item 4.7 be removed from the Consent Agenda so that she could abstain from the vote.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER MESAROS, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- 1. APPROVAL OF COUNCIL MEETING MINUTES OF SEPTEMBER 27, 2016**
- 2. APPROVAL OF CLAIM CHECKS**

3. **ACKNOWLEDGE RECEIPT OF CLAIMS FOR DAMAGES FROM CAROL R. DURST (UNDETERMINED AMOUNT) AND CORYNN COSTA (\$603.90)**
4. **AUGUST 2016 MONTHLY BUDGETARY FINANCIAL REPORT**
5. **STORMWATER MANAGEMENT CODE UPDATE, EDMONDS COMMUNITY DEVELOPMENT CODE CHAPTER 18.30**
6. **AUTHORIZATION FOR MAYOR TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH MIG FOR THE ADA TRANSITION PLAN**
8. **AUTHORIZATION TO CONTRACT WITH JAMES G. MURPHY TO SELL SURPLUS CITY VEHICLES AND SURPLUS CITY EQUIPMENT**
9. **AUTHORIZATION TO CONTRACT WITH PICK-N-PULL TO SCRAP TOTALED CITY VEHICLES**
10. **CONFIRM APPOINTMENT OF BETTY LOU GAENG TO THE CEMETERY BOARD**

Item 4.7: AUTHORIZATION FOR MAYOR TO SIGN SUPPLEMENTAL AGREEMENT WITH HERRERA ENVIRONMENTAL CONSULTANTS FOR THE STORMWATER MANAGEMENT CODE UPDATE

COUNCILMEMBER MESAROS MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO APPROVE ITEM 4.7. MOTION CARRIED (6-0-1), COUNCILMEMBER BUCKSHNIS ABSTAINED.

5. PRESENTATIONS/REPORTS

1. DOMESTIC VIOLENCE AWARENESS PROCLAMATION

Mayor Earling read a proclamation proclaiming October 2016 as Domestic Violence Awareness Month. Deborah Bordsen, Domestic Violence Services of Snohomish County, accepted the proclamation. Ms. Bordsen introduced Mary Anne Dillon, Executive Director, YWCA of Snohomish County. On behalf of the Board of Directors, staff, volunteers and clients, Ms. Bordsen thanked the Council for the proclamation. She said the number one reason for homelessness among women and children in Snohomish County continues to be domestic violence. Every night their emergency confidential shelter houses 13 women and 34 children whose average age is 7½ years.

Ms. Dillon said domestic violence is all too common in the lives of the people they serve at the YWCA. Over 85% of the 3,000 people they serve annually have experienced domestic violence within the past 12 months and 1 in 3 women experience domestic violence at some point in their lives. She felt fortunate to partner with great advocates and agencies like Domestic Violence Services. She thanked the Council and Mayor Earling for raising awareness about domestic violence through this proclamation. Ms. Bordsen relayed Domestic Violence Services has contacted every jurisdiction in the county this year about displaying magnetic purple ribbons on their cars; she thanked the Edmonds Police Chief and Police Department for participating in that effort.

2. PRESENTATION BY DIVERSITY COMMISSION

This item was deferred to a later date.

6. AUDIENCE COMMENTS

Ed Beaulieu, Edmonds, said on October 10th the City is having the balance of its streetlights replaced with high intensity LED lighting which has been noted by the American Medical Association as producing a color spectrum that includes blue lights that are harmful to human health, animals and the environment. Because the lights have not yet been installed, there is an opportunity to consider new information released by the AMA as well as manufactures. He provided a letter outlining a meeting he and his wife had with Snohomish County PUD who stated they have agreed to put a hold on that light installation until further research is done. When this lighting mandate was made by the Department of Energy in 2009, LED lights were in their infancy and there was very little information on the impact to the environment, animals and humans. Since then a number of reports have been released, including one from the AMA, indicating the color spectrum of the light, a temperature rating ranging from 0-8,000; yellow, red and blue light are within that color temperature. Blue light can damage cornea, lead to adult-onset macular degeneration, and can cause issues related to obesity, cancer, and sleeplessness, as well as other health issues. As many as 65% of animals are nocturnal; they cannot close blinds or choose to close their eyes when the lights are on. He proposed putting a hold on the decision to install lights with a color spectrum of 4,000 Kelvin or greater. The lights to be installed in Edmonds are 4000K. He encouraged Councilmembers to read current information and make the best decision on behalf of citizens before the lights are installed. He encouraged the public to do their research and contact Councilmembers and the Mayor.

Sharon Beaulieu, Edmonds, said the new LED technology through Snohomish County PUD is dimmable which is something they have not been able to do with the existing high pressure sodium lights. New lights are available in 3000K which would be approximately the same lumens as the current lights and emit less blue light and more yellow light. The blue light is not good for eyes at night as it relates to visibility, judging colors, and glare and also doesn't work well in rain and fog. She referred to their letter requesting the City or Snohomish County PUD choose 3000K lights. More community members plan to weigh in on this issue later this week including a friend/neighbor who has a PhD in physics and lasers who supports 3000K.

Mayor Earling relayed he spoke with a Snohomish County PUD representative today; a hold has been placed on installation until their next meeting on October 18th.

Will Wilcox, Edmonds, past President of Edmonds Unitarian Universalist Congregation, speaking on their behalf, said their congregation has taken a public stand on reducing the influence of uncountable money in the political process. They testified to the Lynnwood City Council and obtained their support as the 18th city in Washington to support the concept behind Initiative 735. According to ballot language, this measure would urge Washington State Congressional Delegation to propose a federal constitutional amendment that constitutional rights belong only to individuals, not corporations, and constitutionally protected free speech excludes the spending of money. He requested the Edmonds City Council endorsement as another step in educating voters on this important non-partisan issue. He provided a suggested resolution for adoption by the Council. He recalled five years ago the City Council passed limitations related to contributions to Council races, an important first step and a model for other Washington cities. This is a non-partisan, non-binding petition to the State Legislature to work with other states toward a federal constitutional amendment. The ultimate wording of any proposed amendment will come from the legislature, not I-735. If passed, the constitutional amendment will enable governmental bodies at all levels to apply stronger public disclosure to corporations and other entities that are not natural persons. Edmonds could become the 19th Washington city to support I-735 and Washington could become the 18th state to take a similar step.

Susie Schaefer, Edmonds, relayed the Save the Marsh group's thanks to the Council for widening the buffer to the scientific level last week. They will follow the issue to ensure the revised SMP accurately reflects that decision as well as they plan to contact Ecology to ensure they live up to their standards of BAS. She relayed their request that a task force be established for long range planning for the marsh with

the other stakeholders, noting everyone working together will be necessary to save the marsh. She invited the Council and the public to the open house at the demo gardens on Saturday from 10 a.m. to 2 p.m. which will include a cake to celebrate Edmonds being the 41st community in the United States to have a certification as a wildlife friendly community for the past 6 years.

Marvin Phelps, Edmonds, said he is the victim of the most egregious violation of conflict of interest in U.S. history. When James Zachor, Junior and his son conspired to have him convicted of crimes they knew he did not commit, they did not tell him that James Zachor, Junior is the biological father of the complaining witness, his then-wife. He was prosecuted by this father-in-law and as special prosecutor, his bother-in-law acted on his then-wife's behalf without his knowledge. He complained to the Edmonds Police Chief, sent Mr. Taraday an email a few weeks ago regarding this issue, and said it to Judge Coburn in this courtroom yesterday. He has had 109 hearings for crimes he did not commit and was found unanimously not guilty by two juries of his peers in two trials with an hour's deliberation combined on each. The Edmonds Police Chief is either an inept imbecile or he is a corrupt criminal because he allowed this malicious prosecution to continue through today. It is incumbent on the Council as the gatekeepers of the City to allow the proper authorities to step in and stop what continues to be the most egregious violation of conflict of interest in U.S. history.

7. PUBLIC HEARINGS

1. PUBLIC HEARING REGARDING INTENT TO DISSOLVE THE EDMONDS TRANSPORTATION BENEFIT DISTRICT

Public Works Director Phil Williams recalled on August 20, 2016, the Council passed a resolution declaring the intent to evaluate the potential assumption of the duties, responsibilities and obligations of the Edmonds Transportation Benefit District (TBD) into the local government and set a hearing date for tonight. The Council should take public comment and evaluate whether to instruct staff to bring forward an ordinance to accomplish that.

Councilmember Teitzel referred to the agenda memo which states, "Dissolution of the TBD would mean that the vehicle license fees received each month would be credited to the City rather than the TBD. This money would continue to be transferred-out to the annual street overlay program." He asked about the assurances and protections that those funds would indeed be used for street programs and not for other purposes. Mr. Williams answered that is the intent although "annual street overlay program" should state "street maintenance fund." Exactly how the Finance Department will set up the initial receipt of the funds from the Department of Revenue and which account it would be put in and when they would transfer that to Fund 111, Street Maintenance, are details that can be worked out. If the Council has concerns about how that would be done, the ordinance could be drafted to spell that out.

Mayor Earling opened the public participation portion of the public hearing. Hearing no public comment, Mayor Earling closed the public participation portion of the public hearing.

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO DIRECT STAFF TO PREPARE AN ORDINANCE FOR COUNCIL APPROVAL DISSOLVING THE TBD. MOTION CARRIED UNANIMOUSLY.

8. STUDY ITEMS

1. SET PUBLIC HEARING FOR 92ND AVENUE WEST STREET VACATION

Senior Planner Kernan Lien relayed the City received a petition to vacate a portion of 92nd Avenue West. He identified the property on a map, adjacent to the Westgate Chapel area and south of 228th Street. He described the process when the City receives a petition to vacate a portion of right-of-way:

- RCW 35.79.010 and ECDC 20.70.070 requires the City Council to fix a time by resolution for public hearing on any proposed street vacation
- The hearing can occur no less than 20 days and no more than 60 days after the passage of the resolution
- Resolution included in packet sets a public hearing date of November 1, 2016
- An analysis and staff report on the proposal will be prepared for the public hearing.
- The only action requested tonight is setting the public hearing date to consider the vacation request

COUNCIL PRESIDENT JOHNSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO ADOPT RESOLUTION NO. 1371, SETTING THE PUBLIC HEARING DATE FOR NOVEMBER 1, 2016.

Councilmember Mesaros asked whether the area to be vacated was the total strip of property shown. Mr. Lien identified the area as the south approximately 375 feet south of 228th Street. The width of the right-of-way varies from 30 feet at the south terminus to 60 feet over the northerly 290 feet. There are four properties along the east side that are in Esperance; Westgate Chapel owns three parcel on the west side and the remaining property owner has also signed the petition. Councilmember Mesaros observed a portion had already been vacated on the southwest side. Mr. Lien agreed from that point to Edmonds Way has been vacated. Councilmember Mesaros asked when that was done. Mr. Lien responded he did not know.

Councilmember Buckshnis asked whether approval was required from Olympic View Water and Sewer (OVWS). Mr. Lien advised OVWS had been provided notice and they have submitted comments which he will present at the public hearing.

Councilmember Tibbott asked whether a street vacation included an exchange of funds between the City and the adjacent property owners. Mr. Lien answered there could be. Tonight is only setting the public hearing; the details of the vacation will be presented at the public hearing.

MOTION CARRIED UNANIMOUSLY.

2. MULTI-FAMILY TAX EXEMPTION PROGRAM

Economic Development & Community Services Director Patrick Doherty provided the history of the Multi-Family Tax Exemption (MFTE) program.

- 1995 – State Legislature created the MFTE program
 - RCW 84.14
- To help spur redevelopment in lagging urban centers
- Fulfill GMA goals to encourage in-fill development in existing urban centers, thereby reducing sprawl and promoting “smart growth”

He described how MFTE works:

- MFTE provides incentive to developers to invest in “residential targeted areas”
- Residential targeted areas – mixed-use centers designated by cities in Comp Plans or Subarea Plans to receive greater density of multifamily and commercial development
 - Often called “urban villages” or “urban centers”
 - Walkable
 - Amenity-rich
 - Transit-supportive
 - Mixed-use areas
 - Intended to accommodate future growth in housing and employment

- Designated by cities through Comp Plans or Subarea Plans per GMA

Mr. Doherty described barriers to development:

- Notwithstanding a city's plans, transformation to "urban village" can be fraught with challenges
- Challenges include:
 - Competition from higher-rent locales (e.g., Seattle, Bellevue)
 - Complications with urban redevelopment:
 - Unwilling property sellers
 - Need to aggregate multiple properties
 - Existing long-term leases
 - Environmental remediation
- These factors can stall transformation to planned-for mixed-use centers for decades!

He explained the MFTE program is one small tool to provide an incentive to developers and investors to overcome these challenges and encourage development of multifamily and mixed-use projects. To illustrate the program's reach, he identified cities near Edmonds that have implemented MFTE: Seattle, Lynnwood, Everett, Kenmore, Shoreline, Marysville and Mountlake Terrace and statewide: Spokane, Yakima, Bellevue, Renton, Kirkland, Burien, Bremerton, University Place, Puyallup, SeaTac, Bellingham, Auburn, Olympia, Vancouver, Federal Way, Kent, Wenatchee, Walla Walla, Moses Lake, Anacortes, Issaquah, Tukwila, Des Moines and Covington. In fact, because of the program's widespread application statewide, many developers have come to consider the MFTE Program as a necessary tool to help overcome the challenges of urban redevelopment in all but the highest-rent housing markets.

Mr. Doherty explained the proposed MFTE Program for Edmonds in the Westgate Mixed-Use Zone District would provide for the following:

- Be applicable to projects containing at least 20 dwelling units
- Exempt residential improvement value ONLY
- Nonresidential (commercial, e.g.) improvement value is NOT exempt. Land value is NOT exempt.
- A 12-year exemption period for projects that include at least 20% of units as affordable to rent or buy to low- and moderate-income households

He explained there is no increase in taxes to taxpayers:

- Even though a project may be partially exempt from property tax, existing taxpayers see no additional burden.
- Exempted taxes simply do not accrue during the exemption period
- Upon completion of the exemption period, the entire project is taxed and full tax revenue accrues

Pursuant to City Council's adoption of the Westgate Mixed-Use (WMU) Zone District in April 2015, that district was designated a mixed-use center intended to become:

- Mixed-use
- Walkable
- Compact development
- Variety of housing
- Employment
- Goods and services

He explained while residential development has been robust around the city, it is lagging in Westgate, likely due to the challenges cited earlier. Therefore, on 8/16/16 City Council passed Resolution 1368 designating the WMU Zone District as a "residential targeted area" in order to allow implementation of

the MFTE program there. He displayed a map of the WMU Zone District. He reviewed the proposed code sections, explaining the proposal adds new Chapter 3.38 to ECC, "Multi-Family Tax Exemption:"

- 010 – Purpose. To stimulate construction of new multifamily housing, including affordable housing.
- 020 – Definitions. 4 local definitions; rest in RCW.
- 030 – Tax exemption – Duration – Valuation- Exceptions. Lays out the 12-year exemption if 20% of project's units sold or rented as "affordable."
- 040 – Residential targeted areas – Designation. Cites current RTA, Westgate Mixed Use Zone, and provides process for future RTA's.
- 050 – Project eligibility. Sets out requirement for minimum of 20 dwelling units, to meet all codes and regulations, have no violations, etc.
- 060 – Application procedure. Process, requirements, fees.
- 070 – Application review – Approval – Required findings – Issuance of conditional certificate – Denial – Appeal.
 - If all requirements met, director may approve and issue "conditional certificate of acceptance," requiring construction within three years. Then applicant enters into contract approved by mayor, who is hereby authorized to execute contract. If not approved, deny application which is appealable to hearing examiner.
- 080 – Amendment of contract. Amendment may be requested and approved by director.
- 090 – Extension of conditional certificate – Required findings – Denial – Appeal. Applicant may request extension of 3-year construction deadline for factors beyond his/her control. Director may grant or deny, appealable to hearing examiner.
- 100 – Final certificate – Application – Issuance – Denial – Appeal. Once constructed, if all requirements met, director issues final certificate of tax exemption and records with County. May be denied, with appeal to hearing examiner.
- 110 – Annual certification. Every year report on occupancy and vacancy of units, affordable unit count, any improvements made, etc.
- 120 – Cancellation of tax exemption – Appeal. If project no longer complies with requirements or affordability, tax exemption may be canceled. Appealable to hearing examiner.

Mr. Doherty relayed the proposed action: direct staff to return with final code provisions in ordinance format and schedule for approval on the Consent Agenda at October 18, 2016 Council meeting.

Councilmember Fraley-Monillas asked for confirmation that the only tax exemption Edmonds would offer was the 12-year exemption period for projects with affordable housing. Mr. Doherty agreed that was the proposal; the state offers an 8-year exemption that does not include affordable housing. During Council discussion at the previous meeting, Council expressed interest in the option that required affordable housing. Councilmember Fraley-Monillas said she was unlikely to support a MFTE unless it included an affordable housing component.

Councilmember Teitzel expressed support for the proposal, relaying his belief that unless something like this was done, there would not be affordable housing via redevelopment in Edmonds. He asked whether the MFTE Program could be considered for potential redevelopment in Urban Mixed Use Zone IV in the Harbor Square area. Mr. Doherty answered via the same process that the Council used in creating the Westgate Residential Targeted Area that included findings regarding plans for development but development does not occur, any area of the city that exhibits those same characteristics such as Highway 99, could be considered as a residential targeted area and implementation of this program.

COUNCIL PRESIDENT JOHNSON MOVED, SECONDED BY COUNCILMEMBER TIBBOTT, TO DIRECT STAFF TO RETURN WITH FINAL CODE PROVISIONS IN ORDINANCE FORMAT AND SCHEDULE APPROVAL ON THE CONSENT AGENDA AT OCTOBER 18, 2016 COUNCIL MEETING.

Councilmember Buckshnis asked whether an amendment was required to ensure the 12-year exemption. Mr. Doherty advised Section 3.38.030.A specifies a 12-year exemption period for projects that include at least 20% of units as affordable.

Councilmember Nelson clarified when the the state legislature created the MFTE Program, they were trying to fulfill the goals of the GMA to promote smart growth versus sprawl. Mr. Doherty answered growth is planned in urban centers where the services, transit, proximity to schools, walkable environment and the desire is to have development occur there. For many developers it is easier to build on the urban fringe on unencumbered land without leases or multiple property ownerships than in more complex urban centers. This is one small tool to try to level that plain.

MOTION CARRIED UNANIMOUSLY.

3. SHORELINE MASTER PROGRAM UPDATE

Senior Planner Kernen Lien summarized there were eight required changes from the Department of Ecology, seven of which have been reviewed to date. He introduced the first of the remaining issues:

- Ecology Required Change #8 – Buffer Establishment Threshold
 - Footnote 18: Council approved SMP requires establishment of 50-foot buffer with “new development activities”
 - Ecology’s Required Change requires establishment of 50-foot buffer with “redevelopment of greater than 50%” within shoreline jurisdiction
 - No hard threshold in Council approved version
 - Typically nonconforming buildings or uses have to comply when development exceeds 75% of replacement cost
 - Could be established with Master Planned Redevelopment
 - Both Harbor Square and Unocal property are in Master Plan development areas

Councilmember Tibbott observed 50% redevelopment would apply to the entire shoreline jurisdiction. Mr. Lien answered only shoreline jurisdiction, not the entire Harbor Square property. Councilmember Tibbott asked if 50% of the UMU IV area was redeveloped would that trigger reestablishment of the buffer. Mr. Lien answered maintenance on the existing buildings would not trigger establishment of the buffer; that refers to redevelopment of the Harbor Square site. The 50% requirement from Ecology was only within shoreline jurisdiction. He displayed an aerial image of Harbor Square that included a red-dashed line that identifies 200 feet from the Ordinary High Water Mark (OHWM), explaining in Ecology’s proposal, redevelopment of 50% of that area would trigger establishment of the buffer. With the Council’s adoption of a 110-foot buffer plus 15-foot setback, less than 50% of the shoreline area is outside of that so redevelopment outside that area would not trigger the 50% threshold. He was uncertain that Ecology’s 50% requirement made sense with that buffer and setback.

Councilmember Tibbott referred to the illustration, commenting to the right of the red-dashed line, any redevelopment there would not trigger establishment of the buffer. Mr. Lien agreed, because that area is outside shoreline jurisdiction and the SMP does not apply. Councilmember Tibbott observed inside the red-dashed line if 50% was redeveloped, there would be no trigger for establishment of the buffer. Mr. Lien agreed that was true under Ecology’s proposal. Councilmember Tibbott referred to the 75% nonconforming code and Mr. Lien explained that threshold was 75% of the replacement value; for example, if a building were destroyed or altered to an extent that exceeded 75% of its replacement value, which is determined by the building official, the nonconforming threshold would apply and a building would need to conform to the development regulations in effect at that time. City Attorney Jeff Taraday clarified that is not necessarily the standard for reestablishing the buffer. Mr. Lien agreed that had not yet been determined.

Mr. Taraday said it was important to establish a starting point; he emphasized this property cannot be redeveloped without a master plan because, 1) the zoning code calls for a master plan and 2) the Port is over the square footage allowed under the existing contract rezone and cannot add square footage without a master plan. Because redevelopment triggers a master plan, the master plan is the appropriate threshold for reestablishing the buffer.

Councilmember Tibbott said he was seeking the most practical way to understand the trigger if there was not a master plan. Mr. Lien referred to the nonconforming section of the SMP that addresses nonconforming development as well as nonconforming structures; the nonconforming elements at Harbor Square can remain and be maintained. He did not envision that development could occur at Harbor Square until a master plan was developed. If a fire destroyed one of the structures more than 75%, when it was reconstructed, it would be required to comply with the SMP and be moved outside the setback but he was uncertain that would trigger the buffer requirement.

Councilmember Tibbott asked what would trigger the buffer requirement. Mr. Lien advised the Council had not yet determined the trigger; options include establishment with, 1) master plan redevelopment of the site, 2) redevelopment of greater than 50% within shoreline jurisdiction as Ecology recommended, or 3) any redevelopment in the area as the Council previously adopted. The Council's previously adopted version states, setback from new development within UMU IV is 100 feet. New development activities in the UMU IV environment require the establishment of the 50-foot vegetated buffer. He reiterated no new development activity will occur under the existing contract rezone. If one of the structures was destroyed by fire, possibly that would be considered new development activity that triggered the buffer. Mr. Taraday assumed any continuation, maintenance or restoration that falls under the nonconforming use provisions would not trigger any buffer reestablishment.

COUNCILMEMBER TIBBOTT MOVED, SECONDED BY COUNCILMEMBER TEITZEL, TO DEFER A DECISION ON ANY TYPE OF MIXED USE DEVELOPMENT WHICH WOULD INCLUDE RESIDENTIAL IN URBAN MIXED USE IV UNTIL SUCH TIME THE CITY CONSIDERS A MASTER PLAN REZONE FOR THE AREA.

Councilmember Buckshnis asked if the intent of the motion was to remove Required Change 8 in the belief that a master plan must occur in order to do any redevelopment. Councilmember Tibbott responded it was premature to contemplate whether or not there would be residential or if impervious surfaces would be removed without a rezone in place. After a rezone is in place, there may be a proposal for residential.

Councilmember Buckshnis asked if the intent was to remove Required Change 8. Mr. Lien said Required Change 8 deals with when the buffer should be established. The issue of residential use in UMU IV is an Ecology Recommended Change which has not yet been addressed by the Council; the motion mixes those two issues. Because the 110-foot buffer does not exist, the discussion is what triggers the establishment of that 100-foot buffer. Mr. Taraday clarified the issue before the Council is what would trigger the planting/revegetating of the 110-foot buffer. In print there will be a 110-foot buffer, but what development activity would trigger the replanting of that area. Councilmember Tibbott explained his proposal was not to consider that until there is a master plan for UMU IV. Mr. Lien clarified Councilmember Tibbott's motion was that master plan redevelopment of the site would be the trigger for establishment of the buffer.

Councilmember Mesaros agreed with Councilmember Tibbott's proposal, commenting although the Council passed a 125-foot buffer with setback, in reality that requirement nearly guaranteed a 25-foot buffer for the foreseeable future. By requiring any redevelopment to have a master plan, the City is in essence telling the Port before they can do any redevelopment, they must establish the buffer. He was

hopefully the Port would do that sooner than later so that the existing 25-foot buffer does not exist for a long time.

If the Port wanted to add one story of light commercial to a building within the shoreline jurisdiction without changing the footprint of the building, Councilmember Teitzel asked whether that would trigger anything under the SMP or even be allowed. Mr. Lien answered that could not be done under the current rezone.

Council President Johnson recalled Mr. Lien stated Ecology's Required Change 8 related to establishment of 50-foot buffer with "redevelopment of greater than 50%" within shoreline jurisdiction no longer makes sense with the Council's adoption of the 110-foot buffer. Mr. Lien clarified he stated the 50% redevelopment within shoreline does not make sense with a total setback of 125-feet because that is more than 50% of the shoreline jurisdiction. Council President Johnson asked Mr. Lien's recommendation for the City's response to Ecology's Required Change 8. Mr. Lien agreed with Mr. Taraday's memo; redevelopment likely will only occur with a master plan. The nonconforming code will drive what can occur there now and when Harbor Square or the Unocal site comes in for development under a master plan, that would trigger establishment of the buffer.

Council President Johnson agreed that would trigger establishment of the buffer if the Port were the actor in redevelopment; however, there may be grant opportunities for revegetating the buffer and she did not want to preclude those opportunities by requiring a master plan as the trigger for revegetating the buffer. Mr. Lien said that is the requirement for when the buffer has to be established. There is nothing that prohibits voluntary establishment of the buffer. Mr. Taraday agreed.

Council President Johnson questioned whether the motion made sense at this point or if it muddled the waters. Mr. Taraday responded the motion does add clarity and predictability; this discussion is about the adoption of regulations that address development activity, not the possibility of a voluntary revegetation. The scenario of a master plan development would trigger replanting the buffer. The Council needs to provide a response to Required Change 8 and this provides a substantive response even if to some it may go without saying. Development Services Director Shane Hope concurred, commenting if the motion is to have development and approval of a master plan be the required trigger, that makes a lot of sense.

Councilmember Buckshnis said it goes without saying that a master plan will be required and she questioned why it needed to be included in the SMP. Ms. Hope answered the issue is what requires the property owner to plant the buffer. What would require planting the buffer is redevelopment; redevelopment can only occur via a master plan. Councilmember Buckshnis provided a hypothetical, the City has a windfall and purchases part of the property and does not want to do a master plan redevelopment either at Harbor Square or Unocal. Ms. Hope responded the buffer can be voluntarily revegetated sooner but is required with redevelopment.

Councilmember Buckshnis recalled the lengthy process to develop and review a master plan. Mr. Taraday said if the Council prefers, staff could prepare language clarifying that nothing prevents any voluntary replanting of the 110-feet prior to a master plan development occurring.

Councilmember Tibbott restated the motion as follows:

DEFER A DECISION ON MIXED USE DEVELOPMENT IN URBAN MIXED USE IV UNTIL SUCH TIME AS A MASTER PLAN REZONE IS COMPLETED FOR THE AREA.

If Council's direction to Ecology is a 110-foot buffer and 15-foot setback for a total of 125 feet and the Port who owns the UMU IV property says that will not work and they will not do anything other than maintain their property, Councilmember Teitzel asked whether the Port would be required to change the buffer beyond the 25 feet that currently exists. **David Pater, Department of Ecology**, answered no, there

was no requirement if the Port continues the existing use and does not expand it. He said unfortunately that is not uncommon in shorelines.

Councilmember Nelson did not support the motion because the intent is to establish clarity regarding what activity would trigger the 110-foot vegetated buffer and the Council needs to provide guidance regarding a that triggers that requirement.

Councilmember Teitzel commented the motion addresses whether or not a master plan would trigger any change in the future. Absent a master plan, there would be no requirement for the Port to reestablish the buffer. Mr. Pater agreed, commented there are a number of nonconforming uses on the site related to the application of buffers and setbacks on developed parcels. There is no requirement beyond the master plan triggered by development. He commented triggering through the master plan is considered mitigation for the development even though on the ground it looks like restoration; that is the difference between using a master plan and previous discussions about restoration opportunities with funding via grants or the property owner parceling off property for restoration.

Councilmember Teitzel relayed his understanding if the Port does not come forth with a master plan in the next ten years, the conditions on the ground will not change, there will not be a larger buffer and the marsh will not enjoy the effects of restoration. Mr. Pater agreed these properties would remain the same although there are other efforts such as daylighting of Willow Creek.

Council President Johnson noted Required Change 8 is to change the footnote related to the setback buffer to note that the buffer establishment will be required if more than 50% of Harbor Square property within the shoreline jurisdiction is redeveloped. She said the motion does not directly relate to that Required Change. Mr. Lien said the motion mixes the recommended change related to UMU IV with determining when the buffer is established. Council President Johnson said she would support the motion under the recommended change related to residential use in UMU IV but not Required Change 8.

Councilmember Fraley-Monillas asked if there was any requirement for the Port to develop a master plan. Mr. Lien answered the zoning of Harbor Square is a contract rezone CG; the current development is consistent with that zoning. The Comprehensive Plan designation for the Harbor Square property is Downtown Master Plan which requires a master plan redevelopment which would include a contract rezone and a master plan to establish redevelopment of the site. The Unocal property is zoned MP 2 as well as has a master plan Comprehensive Plan designation. He summarized both properties are subject to development of a master plan when they are developed/redeveloped.

COUNCILMEMBER TIBBOTT WITHDREW HIS MOTION WITH THE AGREEMENT OF THE SECOND.

Councilmember Buckshnis commented if 75% of the existing nonconforming buildings were destroyed, they could be rebuilt on the existing footprint. She asked whether that would be an appropriate trigger. Mr. Lien answered the nonconforming code allows reestablishing of a building if less than 75% is destroyed; that is not a trigger. He agreed with Mr. Taraday that a master plan is the appropriate trigger; language could be added that voluntary establishment of the buffer was not prohibited. Before a master plan is developed and adopted, the area would be subject to the nonconforming code in the SMP which includes the 75% provision.

Councilmember Buckshnis suggested the Council state they did not agreed with Required Change 8 due to the change in the buffer and include a requirement for a master plan. Ms. Hope clarified Councilmember Buckshnis' suggestion to retain the development activity trigger the way the Council originally proposed because a master plan will be required. She agreed that was a possibility. Mr. Taraday recommended being clear to the property owner and citizens that building maintenance at Harbor Square

will not trigger a requirement to plant the buffer. Clearly stating that a master plan triggers reestablishment of the buffer eliminates any ambiguity. Councilmember Buckshnis commented an extensive remodel of Harbor Square is underway; a corridor from the swimming pool to the women's locker room could not be constructed because it would enlarge the building footprint which illustrates staff is following the existing code. She felt a requirement for a master plan as a trigger for redevelopment was a Catch 22 because it should happen anyway. Mr. Taraday said language could be included that voluntary restoration can occur without a master plan.

Councilmember Buckshnis suggested Footprint 18 state voluntary restoration can occur at any time but the trigger for redevelopment is a master plan. Mr. Taraday said that footnote made sense given the Comprehensive Plan designation and that Harbor Square is fully built out under the existing contract rezone.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCIL PRESIDENT JOHNSON, THAT RESTORATION OF THE BUFFERS AND SETBACKS CAN OCCUR AT ANY POINT IN TIME BUT THE TRIGGER FOR REESTABLISHING THE BUFFER WOULD BE A MASTER PLAN DEVELOPMENT.

Mr. Taraday suggested if the motion passes, Mr. Lien, Ms. Hope and he return with the changes in written form for the Council's review. He restated what he believed to be the intent of the motion:

RESTORATION OF THE BUFFER CAN HAPPEN IN THE ABSENCE OF REDEVELOPMENT AND RESTORATION OF THE BUFFER WILL BE REQUIRED PURSUANT TO AN ADOPTED MASTER PLAN.

UPON ROLL CALL, MOTION CARRIED (7-0); COUNCIL PRESIDENT JOHNSON AND COUNCILMEMBERS NELSON, FRALEY-MONILLAS, BUCKSHNIS, MESAROS, TEITZEL AND TIBBOTT VOTING YES.

Mayor Earling declared a brief recess.

Mr. Lien introduced the Ecology Recommended Change – Residential Use in UMU IV

- Council approved SMP did not allow for residential uses in the UMU IV environment
- Ecology's recommended change to allow for multi-family residential development in the UMU IV environment
 - Would eliminate the need for an SMP amendment should the Council consider a rezone allowing residential development
- City is not required to accept change or offer an alternative as with the required changes
- City may simply acknowledge the recommendation
- Harbor Square property does not allow residential; the MP 2 zone on the Unocal property has a residential component so within shoreline jurisdiction there would not be any residential development even though allowed by the zone

If a decision was made later by the City and Port in conjunction with a master plan to allow residential in UMU IV, Councilmember Teitzel asked how long it would take to make that change with Ecology. Mr. Pater answered the current process is the same as this comprehensive update. Ecology is in the midst of rule changes that hopefully will streamline small, limited amendments and reduce the time that takes. If there were not much controversy or public comment, that would also reduce the time necessary for an amendment. The time could be as short as two months or as long as six months. Councilmember Buckshnis did not support this recommendation in view of the amount of time a master planning process takes.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER TIBBOTT, TO NOT ENTERTAIN ECOLOGY'S RECOMMENDED CHANGE, ITEM 9, RELATED TO RESIDENTIAL USE IN UMU IV.

Councilmember Nelson observed one of the options was for the City to acknowledge the recommendation and asked if that meant the City acknowledged it but did not act on it. Mr. Lien explained unlike the required changes, where if the City did not accept the change an alternative needed to be offered, this is a recommended change. If the motion passes, the response to Ecology would state the City acknowledges the recommendation however will not consider it at this time.

MOTION CARRIED UNANIMOUSLY.

Mayor Earling inquired about the timeline for completing the response to Ecology. Mr. Lien suggested a draft response to Ecology that includes all the Council's preliminary votes could be presented to Council for review at the October 18 meeting.

Councilmember Buckshnis asked if Ecology expected the entire updated SMP or a letter summarizing the changes and the changes subsequently made to the SMP. Mr. Pater said the response focuses on the required changes; Ecology does not expect the SMP will reflect all the changes at that time and that can be accomplished later. He emphasized for the two required changes that the Council deviated from, an analysis of how it meets the intent of Ecology's proposed required change is required. He assumed Mr. Taraday's memo would be part of that supporting documentation. Mr. Lien envisioned the response to Ecology would be in three parts, 1) a cover letter summarizing the responses to the alternative changes, 2) a table with Ecology's required changes and the City's response, and 3) justification for the changes. He will provide a draft for Council review at the October 18 meeting.

Mr. Lien explained on September 13 he presented his attempt to incorporate the Council's votes on the first five required changes related to incorporating the recently updated critical area regulations into the SMP. With the Council's vote to incorporate the 2016 Wetland Guidance which came out after the adoption of the CAO, he had to determine how to incorporate it into the SMP. He reviewed:

- SMP 24.40.020 – Critical Areas
 - Ecology Required Changes 1 and 2 – update CAO reference and Appendix B
 - Required change 1 reference Ord. 4026 dated May 3, 2016
 - Required change 2 is to replace Appendix B with the critical area regulations adopted in 2016 under Ord. 4026 (minus exceptions)
 - August 2nd – Council voted to accept changes
 - Ecology Required Change 3 – Critical area provisions requiring shoreline variance
 - Required change would eliminate SMP 24.40.020.C
 - August 2nd – Council voted to accept change
 - Ecology Required Change 4 – Critical Area Exceptions
 - Required change would modify list to only except critical area variance (ECDC 23.40.210) and geologically hazardous areas allowed activities (ECDC 23.80.040.B)
 - August 2nd – Council voted to accept change
 - Exceptions were reviewed given decision to incorporate 2016 guidance

Mr. Lien referred to provisions of the critical area regulations to be accepted (packet page 518), explaining during his review he noted a few items not in Ecology's table as exceptions; one of which was the monitoring program. Ecology wanted it excepted because they wanted a 10-year monitoring program and the critical area regulations only had a 5-year monitoring program. The updated critical area regulations still only have a five-year monitoring program so this exception would be retained. He referred to the SMP 10-year monitoring program (packet page 519). The SMP also has its own variance

process so the critical area regulation's variance process would be excepted. With regard to minor site investigative work, the language is similar to the critical area regulations.

Mr. Lien continued his review:

- Ecology Required Change 5 – SMP Wetland Section
 - SMP 24.40.020.F contains wetland regulations for shoreline jurisdiction based on Ecology's Guidance for Small Cities
 - Required change would remove SMP 24.40.020.F
 - August 16th – Council voted not to accept Ecology's required change, but to incorporate the 2016 Wetland Guidance into the SMP
- 2016 Wetland Guidance
 - Wetland Categories
 - Ecology commented on need to incorporate line on "Illegal modifications"
 - Buffer Requirements
 - Exemptions in Wetlands – Council Packet pg. 394
 - Ecology indicated not to include in SMP
 - Other notable changes
 - Buffer reductions and averaging
 - Physically Separated/Functionally Isolated
 - Passive Recreation

Council President Johnson inquired about notable changes in buffer reduction and averaging. Mr. Lien explained when this version of the SMP was drafted, there was a different version of the critical area regulations. The old version of the critical area regulations allowed buffer reduction and buffer averaging of 50% of the buffer width. Both the Small City Guidance and the 2016 Wetland Guidance allowed buffer averaging of 25% of the buffer width which was included in the CAO so it was deleted from the SMP. The ultimate goal is to have the same version of critical area regulations that apply outside of shoreline jurisdiction apply inside shoreline jurisdiction.

Council President Johnson said it was unclear whether the new language was being incorporated or coordinating with the adopted CAO. Mr. Lien answered it is a little of both. He referred to deleted sections on packet pages 525-526 related to buffer width reductions and buffer width averaging which means the critical area regulations would apply in shoreline jurisdiction. He referred to the exceptions on page 517-518, explaining wetland buffer width averaging was deleted from the exception list which means the wetland buffer width averaging in the critical area regulations would apply in shoreline jurisdiction.

Council President Johnson observed the updated language was not being used in that case. Mr. Lien responded the wetland buffer averaging in the adopted critical area regulations is consistent with the 2016 Guidance in that it only allows a 25% reduction of the buffer. Council President Johnson recalled the Council requested staff incorporate the 2016 Wetland Guidance; she asked if there were inconsistencies with that language with regard to buffer width averaging and buffer reduction. Mr. Lien highlighted items in the critical area regulations that are not in the 2016 Guidance, 1) interrupted buffer – due to Council discussion he recommended retaining that in the critical area regulations, and 2) buffer width reduction - due to Council discussion he recommended retaining that in the critical area regulations. He summarized those were the two areas that the CAO does not exactly match the 2016 Wetland Guidance.

Council President Johnson asked if there were any new regulations that the Council should consider. Mr. Lien answered those are the two items in critical area regulations that are not specifically called out in the 2016 Guidance. Everything else in the critical area regulations seems to be consistent with the 2016 Guidance. The primary change was related to buffers and the buffer tables which were incorporated into the SMP.

Councilmember Buckshnis summarized her understanding of Mr. Lien's explanation: because the Council discussed those two issues for so long, they were retained in the critical area regulations even though it is not addressed in the 2016 Wetland Guidance. Mr. Lien agreed. For Councilmember Buckshnis, he said he was seeking direction from Council regarding exceptions in wetlands and the line regarding illegal modification.

Councilmember Buckshnis referred to language on page 527, "Do not contain a Priority Habitat or a Priority Area1 for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter 23.90 ECDC." She recalled the Edmonds Marsh was added to a list in the CAO because it was a Priority 1 habitat and recommended retaining that section. Mr. Lien explained that section means if it is a priority habitat, this exemption section does not apply to it. The Exemptions in Wetlands section was included because the small isolated wetland section in the critical area regulations apply to a Category III and IV wetland. In the 2016 Guidance, this section only applies to Category IV wetlands that meet the specific criteria, which is significant different than the critical area regulations. Ecology is saying no wetland, even a Category IV wetland, should be exempt from the buffer regulations, etc. because it would not meet the no net loss criteria. Councilmember Buckshnis said that should be retained because the Edmonds Marsh is a priority habitat. She preferred to retain this section and have Ecology tell the City to remove it. Mr. Lien explained leaving this section in would exempt Category IV wetlands from buffer requirements. Ecology is saying do not include this Exemptions in Wetlands section in the SMP because it is not consistent with the no net loss criteria. Council agreed to remove this section.

9. MAYOR'S COMMENTS

Mayor Earling reminded of the AWC regional meeting at Scotts on October 20. He reported several directors and he went to Western Washington University in Bellingham yesterday to talk with professors and students regarding the work they will be doing for the City. It was fun to meet the professors and see 40-50 students so excited about working specific projects including the marsh. Groups of students have visited the City and more visits are planned. Work will begin soon and periodic reports will be provided to Council.

10. COUNCIL COMMENTS

Councilmember Teitzel said he was proud of all three major football teams in the state last week, especially WSU.

Council President Johnson said she plans to attend the AWC SCT dinner and encouraged Councilmembers to attend.

Councilmember Fraley-Monillas reminded of the Immigrant and Refugee Forum, hosted by the Diversity Commission, on October 12 at 6 p.m. in the Library Plaza Room. She hoped to see Councilmembers and the public there. She said go Huskies.

11. CONVENE IN EXECUTIVE SESSION REGARDING PENDING OR POTENTIAL LITIGATION PER RCW 42.30.110(1)(i)

This item was not needed.

12. RECONVENE IN OPEN SESSION. POTENTIAL ACTION AS A RESULT OF MEETING IN EXECUTIVE SESSION

This item was not needed.

13. **ADJOURN**

With no further business, the Council meeting was adjourned at 9:10 p.m.